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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 RICARDO MARTINEZ,
11 Plaintiff,
12 v.
13
14 E. GITOVA, et al.,
15 Defendants.

16 Case No. 19-03087 EJD (PR)

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18 **ORDER OF DISMISSAL**

19 Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42
20 U.S.C. § 1983 against employees at Salinas Valley State Prison (“SVSP”), where he was
21 previously incarcerated. The Court dismissed the complaint with leave to amend to
22 attempt to state sufficient facts to support a First Amendment retaliation claim. Dkt. No. 6.
23 Plaintiff has filed an amended complaint. Dkt. No. 8, hereinafter “Am. Compl.”

24
25 **DISCUSSION**

26 A. **Standard of Review**

27 A federal court must conduct a preliminary screening in any case in which a
28 prisoner seeks redress from a governmental entity or officer or employee of a

1 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any
2 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
3 upon which relief may be granted or seek monetary relief from a defendant who is immune
4 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
5 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
7 elements: (1) that a right secured by the Constitution or laws of the United States was
8 violated, and (2) that the alleged violation was committed by a person acting under the
9 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

10 **B. Plaintiff’s Claims**

11 Plaintiff claims that on November 28, 2016, he went to the medication line at
12 Building D-6 of SVSP where Defendant Nurse E. Gitova was working behind a glass
13 counter. Am. Compl. at 3. Plaintiff then showed Defendant Gitova the inside of his coffee
14 cup for her to make sure that he was taking his medication, and accidentally spilled coffee
15 on the countertop. Id. Based on these allegations, Plaintiff claims that his Fourteenth
16 Amendment right was violated by Defendant Gitova. Id. Plaintiff makes no mention of a
17 previously alleged First Amendment claim from the original complaint.

18 The Due Process Clause of the Fourteenth Amendment protects individuals against
19 governmental deprivations of “life, liberty or property,” as those words have been
20 interpreted and given meaning over the life of our republic, without due process of law.
21 Board of Regents v. Roth, 408 U.S. 564, 570-71 (1972); Mullins v. Oregon, 57 F.3d 789,
22 795 (9th Cir. 1995). Interests that are procedurally protected by the Due Process Clause
23 may arise from two sources – the Due Process Clause itself and laws of the states. See
24 Meachum v. Fano, 427 U.S. 215, 223-27 (1976). In the prison context, these interests are
25 generally ones pertaining to liberty. Changes in conditions so severe as to affect the
26 sentence imposed in an unexpected manner implicate the Due Process Clause itself,
27 whether or not they are authorized by state law. See Sandin v. Conner, 515 U.S. 472, 484

1 (1995) (citing Vitek v. Jones, 445 U.S. 480, 493 (1980) (transfer to mental hospital), and
2 Washington v. Harper, 494 U.S. 210, 221-22 (1990) (involuntary administration of
3 psychotropic drugs)). A state may not impose such changes without complying with
4 minimum requirements of procedural due process. See id. at 484. Once a protected
5 interest is established, either through the Due Process Clause itself or through a state
6 statute or regulation, the court must determine what process is due before the interest may
7 be taken away. See Wilkinson, 545 U.S. at 224-25.

8 Plaintiff fails to allege sufficient facts by which the Court can liberally construe a
9 Fourteenth Amendment violation by Defendant Gitova. There are no facts to indicate that
10 Plaintiff was deprived of a fundamental interest under the Due Process clause or an interest
11 created by state law, or that he suffered a change in conditions of confinement that was so
12 severe as to affect the sentence imposed in an unexpected manner. Lastly, there are no
13 facts indicating that Defendant Gitova violated Plaintiff's right to procedural due process
14 before depriving Plaintiff of a protected interest. Accordingly, the amended complaint
15 fails to state a cognizable claim and must be dismissed. The dismissal is without leave to
16 amend because Plaintiff was already afforded one opportunity to amend and the Court
17 finds no good cause to grant him another opportunity where he appears to be merely
18 fishing for a viable cause of action based on the same set of facts which, liberally
19 construed, fail to support any constitutional claim. Wagh v. Metris Direct, Inc., 363 F.3d
20 821, 830 (9th Cir. 2003) (district court's discretion to deny leave to amend particularly
21 broad where plaintiff has previously filed an amended complaint); Ferdik v. Bonzelet, 963
22 F.2d 1258, 1261 (9th Cir. 1992).

23
24 **CONCLUSION**

25 For the foregoing reasons, the amended complaint is **DISMISSED** with prejudice
26 for failure to state a claim for which relief can be granted.

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1 **IT IS SO ORDERED.**
2 Dated: 3/27/2020

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Order of Dismissal
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EDWARD J. DAVILA
United States District Judge